In conclusion we would refer to a comment made by learned counsel for the appellant during the trial and repeated in this court that the crime could have been avoided if the police had restrained the appellant from going out of the investigating officer's office after the interview. In fairness to the officer concerned, whose conduct was criticised, we must say that, in our view, he could no more have foreseen the tragedy than any of the unfortunate victims themselves. Hence no blame should attach to him for having failed to anticipate what nobody else could possibly have foreseen.

Appeal allowed.

Solicitors: *Kamala Devi & Co.*

GURBACHAN SINGH v. SHARIKAT BAKTI LTD.

[F.C. (Barakbah L.P., Azmi C.J. (Malaya) and Raja Azlan Shah J.) January 9, 1967]

[K.L. — Federal Court Civil Appeal No. X.43 of 1966]

Practice and Procedure — R.S.C., O. 14 — Appeal against order giving leave to sign judgment — Question of fact and law.

This is an appeal against the order of the High Court ([1966] 2 M.L.J. 269) giving leave that judgment be summarily entered against the defendant, appellant herein, under R.S.C., Order 14.

Held: as one of the questions which had to be decided involved a substantial question of fact and law, the appellant, should be given leave to defend.

FEDERAL COURT.

Chan Siew Yoon for the appellant.

L. P. Thean for the respondents.

Azmi C.J. (Malaya): This is an appeal against the order of Gill J. giving leave that judgment be summarily entered against the defendant under Order 14 of the Rules of the Supreme Court.

The facts may be summarised as follows:—

The plaintiffs are the registered owners of the land in question and in their statement of claim they alleged that the defendant is a trespasser on the said land or more particularly that part with a building known as No. 86A and 87 Jalan Ipoh, Kuala Lumpur.

In the alternative the plaintiffs also allege that the defendant was at all material times a bare licensee of the said part of the land which licence was determined by the notice of the 10th January 1966. The plaintiffs then claim for:—

(a) a declaration that the defendant is a trespasser on the said land,

(b) an injunction restraining the defendant, his agents or servant from collecting any rents or profits from the occupants of the said land or otherwise interfering with the plaintiffs' enjoyment of the said land,

(c) that the defendant do deliver to the plaintiffs vacant possession of the said land and

(d) damages.

The plaintiffs served on the defendant the notice dated 10th January 1966 requesting the defendant to cease trespassing upon the said land.

The writ with the statement of claim was served on the defendant on 15th April 1966. On the 10th May 1966, the plaintiffs applied for liberty to sign final judgment in the action.

On the 13th May 1966 the defendant filed his defence, denying that he was a trespasser or that he was a bare licensee of the said land. The defence went on to say that the defendant has been a lawful tenant of the said land since 1954 by paying ground rent to one Junid bin Amin who at all times was acting as agent of the administrators of the estate of Jamiah binte Haji Abdul Rahman, the previous proprietress of the land. It also said that the buildings on the land were erected by the defendant as lawful tenant and further or in the alternative even assuming that the said Junid bin Amin had acted without authority of the administrators of the said estate the said administrators of the estate should have given the defendant notice of the lack of authority on the part of the said Junid bin Amin and by remaining silent for over a period of ten years, the administrators were estopped from denying that the defendant was the lawful tenant of the said land and the plaintiffs as purchasers of the said premises can be in no better position.

In support of the application for summary judgment Mohamed Salleh, the manager of the plaintiff company affirmed in an affidavit made on the 10th May 1966 that the plaintiff company purchased the said land on the 25th November 1965 from the administrators of the estate of Jamiah binte Haji Abdul Rahman, who had prior to the sale been the registered proprietress of the land and also the fact that on the 10th January 1966 the plaintiffs served on the defendant notice requesting the defendant to cease trespassing on the said land and requiring him to vacate the same.

Apparently when notice to quit was served on the defendant on the 10th January 1966 the defendant on the 31st of that month alleged that one Junid had collected rent from him on the 31st December 1965 being rent for the year 1966. In reference to this Mohamed Salleh replied that the said Junid bin Amin was never at any time the registered proprietor of the said land nor had he at any time any right, title, interest or power to confer any right, title, or interest in the said land or any part thereof and in consequence Mohamed Salleh went on to say there was no defence in the action save as to the amount of damages.

In his affidavit the defendant repeated what he had said in his statement of defence.

The above points were urged before Gill J. and he held that since the administrators were appointed by the court on 27th January 1955 and the grant of letters of administration was extracted on 1st June 1955, he therefore held that Junid bin Amin could not possibly have been the agent of the administrators long before the administrators acquired the status as such. In reference to Junid bin Amin being one of the sons of the deceased, the learned judge held that that fact could not give him any authority to deal with any property belonging to the estate. He apparently accepted the evidence of Mohamed Isa bin Mohamed Amin, one of the administrators to the effect that neither he nor his co-administrator held out at any time the said Junid to be their agent either expressly or impliedly.

The learned judge then went on to say that if the administrators did nothing to oust the defendant from the land, the highest that could be said in his favour is that he was a bare licensee and such licence had come to an end when the successors in title to the administrators i.e. the present plaintiffs gave notice to quit. He therefore was of the view that there was no triable issue. As to the question of silence on the part of the administrators, the learned judge held that that alone does not or did not constitute estoppel as there was no duty to speak. In all the circumstances he gave leave to the plaintiffs to sign final judgment in terms of the statement of claim.

One of the substantial questions which has to be decided in the suit is whether Junid had any authority from the beneficiaries of the deceased Jamiah or the administrators of her estate to permit the defendant to build the houses on the land and this involves a substantial question of fact and law particularly in view of the fact that Mohamed Isa bin Mohamed Amin and the other administrator had done nothing in reference to the construction of these houses on the land even though they had been appointed adminstrators since 1955.

For the above reason alone, in my view, the defendant should be given leave to defend.

Barakbah L.P. and **Raja Azlan Shah J.** concurred.

Appeal allowed.

Solicitors: *Heng Chen & Co.; Shook Lin & Bok.*

CHEW SEOK TEE v. LIM KER & ANOR.

[A.C.J. (Yong J.) January 15, 1967]

[Alor Star — Civil Appeal No. 7 of 1965]

Practice and Procedure — Trial — Judge calling and examining witness on his own — Demeanour of witness — Practice undesirable.

Bills of Sale — Personal chattel — Goods — Bills of Sale Ordinance, 1950, ss. 2, 3 & 10(2).

This was an appeal against the judgment of the learned president who dismissed the objection of the appellant to the attachment of a house in execution of a decree obtained by the plaintiff-respondent. The appellant had claimed that the house was hers. She gave evidence and called witnesses in support of her claim. The respondent did not give evidence or call any witnesses. The learned president then took upon himself the task of procuring further evidence for the parties. After he had examined a witness and cross-examined another witness he dismissed the objection of the appellant. The learned president also held that the document of sale was void as it was not attested and registered as required by section 10(2) of the Bills of Sale Ordinance.

Held: (1) the practice adopted by the learned president was undesirable as it might lead to a miscarriage of justice;

(2) in this case on the facts the learned president should have accepted the evidence of the appellant, which was not contradicted by the respondent, and held that the appellant was the owner of the house;

(3) a house or building with chattel interest in real estate is not a "personal chattel" or "goods" and section 10(2) of the Ordinance did not apply.

Cases referred to:—

(1) *Yuill* v. *Yuill* [1945] P. 15.

(2) *Jones* v. *National Coal Board* [1957] 2 W.L.R. 760.

CIVIL APPEAL.

Oo Gin Sun for the appellant.

Lim Huck Aik for the respondent.

Yong J.: This is an appeal by the above-named objector-appellant who objected to her house No. 7B, Kampong Bahru, Lunas (hereinafter called "the said house") being attached in execution of a decree obtained by the plaintiff-respondent against the defendant in Sungei Patani Sessions Court Civil Action No. 22 of 1963, on the ground that she is the owner of the said house.

She gave evidence that she had purchased the said house on 25th June 1962 from the defendant who gave her a document of sale (P-1). On the next day (26th June 1962) she submitted P-1 to the chairman of the Lunas Local Council together with an application for transfer (P-2) duly signed by the vendor (defendant) applying for the transfer of the said house to her. She paid to the Lunas Local Council a transfer fee of $1 for which the council issued a Government printed receipt (P-4) numbered B. No. 485012 and dated 26th June 1962. On 27th June 1962 the said application was approved and such approval was duly endorsed on P-2.